

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN L. KNIGHT and DEPARTMENT OF THE NAVY,
NAVAL UNDERSEA WARFARE ENGINEERING STATION, Keyport, WA

*Docket No. 99-1715; Oral Argument Held February 21, 2002;
Issued July 12, 2002*

Appearances: *John Eiler Goodwin, Esq.*, for appellant; *Julia Mankata, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective March 25, 1998.

On February 28, 1989 appellant, then a 29-year-old electronic mechanic helper, filed a notice of occupational disease and claim for compensation, alleging that she sustained a pulmonary condition as a result of her federal employment. In a letter dated December 1, 1986, the Office accepted her claim for a temporary aggravation of intrinsic asthma. Effective March 11, 1990, appellant was placed on the periodic compensation rolls.

Appellant was treated for her pulmonary condition by Dr. Barry E. Coalson, a Board-certified internist. He diagnosed acute bronchitis and reactive airways function syndrome. Dr. Coalson treated appellant for mild exacerbation of her reactive airways disease. In a medical report dated May 6, 1997, Dr. Coalson listed his impressions as:

“(1) Reactive airways dysfunction syndrome (RADS) -- severe.

“(2) Multiple recent exacerbations requiring at least one emergency room visit.

“(3) Ongoing disability secondary to above.”

Dr. Coalson opined that appellant must be protected from exposure to any airway irritants.

The Office referred appellant to Dr. Rex W. Bolin, a Board-certified internist, for a second opinion. In a medical report dated September 28, 1995, he noted appellant's history of occupational exposure to chemicals, the accepted conditions of temporary aggravation of

intrinsic asthma, physical examination findings and results of medical tests. Dr. Bolin concluded that appellant had a major exacerbation of her preexisting mild asthma while exposed to certain chemicals during her federal employment. He also noted significant depression. Dr. Bolin stated that he did not think that appellant was capable of holding a job at the present time, not simply due to her asthma, but because of her psychological condition. He noted that she could not be in any environment that was at the least bit toxic. In response to further questions from the Office, Dr. Bolin, in a report dated November 10, 1995, stated:

“I believe [appellant] has significant intrinsic asthma with a variety of trigger factors and that she would probably be experiencing the difficulties that we are presently describing whether she had worked at [the employing establishment] or not. However, let me say once again that the exposures encountered at [the employing establishment] likely did cause temporary aggravation of her condition. I do not think that the exposure at [the employing establishment] caused permanent damage to [appellant’s] airways.”

In a medical report dated August 6, 1997, Dr. Coalson, in response to the Office’s request, reviewed Dr. Bolin’s report. He stated that he agreed with Dr. Bolin’s evaluation with one exception: “[Appellant] gives me a much stronger chronologic association between her worsening respiratory symptoms and her occupational exposure to airways irritants.” He continued:

“It is unfortunate that Dr. Bolin was not able to obtain a more detailed history personally from [appellant] as I think, if he had been able to do so, he would have established historical evidence much more convincing of an association between [appellant’s] occupational exposure and her exacerbation of a preexisting condition. I would also agree with Dr. Bolin’s assessment that [appellant] is not employable at this time due to a combination of her respiratory debilitation as well as her fragile psychological situation (which also is at least in part secondary to her pulmonary deterioration).”

The Office found that a conflict of medical opinions was created between Dr. Coalson and Dr. Bolin as to whether appellant currently had residuals of her temporary aggravation of intrinsic asthma. By letter dated October 15, 1997, the Office referred appellant to Dr. Teresa Jacobs, Board-certified internist, for an impartial medical examination. In a medical report dated November 21, 1997, Dr. Jacobs reviewed appellant’s history and results of medical tests and concluded that appellant’s studies were somewhat limited by inconsistent technique. She noted that the spirometry was most consistent with mild restriction and obstructions, primarily in the small airways, that lung volumes were most consistent with a restrictive defect, not showing any evidence of air trapping and only mild airways resistance, and that gas exchange appeared normal. Dr. Jacobs concluded:

“Overall, these tests suggest mild restriction and mild obstruction with normal gas exchange. This may be seen in a variety of circumstances and clinical correlation is suggested.”

In a report dated January 7, 1998, Dr. Jacobs gave a careful review of appellant's medical history and the various diagnostic tests. She diagnosed:

“(1) Intrinsic asthma, naturally occurring and not related to an occupational exposure.

“(2) Severe psychiatric illness, apparently a form of bipolar disorder, although I wonder about other components perhaps of post-traumatic stress, depression, and primary anxiety.

“(3) Episodic reactions to chemical exposure at work, characterized primary by gastrointestinal and CNS symptoms, not related to her current respiratory status.

“(4) Gastroesophageal reflux disease, likely contributing to difficult asthma control.

“(5) Intermittent sinusitis, also likely contributing to difficult asthma control.

“(6) Variable performance of pulmonary function tests, primarily demonstrating a restrictive defect, etiology not well defined, but may be a combination of technique, body habits and intermittent asthma.”

Dr. Jacobs found intrinsic asthma that was not related to occupational exposure. She also opined that appellant did not have reactive airways dysfunction syndrome. Dr. Jacobs noted that the severe exposures that appellant cites in 1984 and 1989 were not followed by respiratory exacerbation. She continued:

“While it appears that [appellant's] preexisting asthma may have been resurfacing the mid 1980s, this was the natural course of the disease, not a result of any particular exposure. However, asthmatics in general are sensitive to airborne irritants and it is possible that the work environment caused intermittent temporary aggravations of this preexisting asthma and resulted in the intermittent need for increased medication. Some of the medical records, however, indicate that flares were not related to work exposures, but to infection (September 8, 1988), possible new fumes in a mobile home (December 30, 1986) and that from a wood-burning stove. Any intermittent work-related aggravations would have been temporary, would not have caused any additional damage or lasting problems and would not be contributing to her current circumstance.”

* * *

“Given her overall condition, I do not see any way in which [appellant] can be employed at this time. This is not based primarily on her respiratory condition, although it is quite unstable, but on the combination of medical problems which all interact. It is possible that, if her psychiatric condition can be kept under control, her respiratory condition could be better controlled as well, allowing her to carry on more normal activities including some type of employment. This is,

however, purely speculation and will clearly require time and extensive physician follow-up to assess.”

On February 24, 1998 the Office issued a notice of proposed termination of compensation. By decision dated March 25, 1998, the proposed termination was made final.

By letter dated March 31, 1998, appellant requested a hearing. At the hearing held on October 28, 1998, appellant testified that she used harsh chemicals to clean torpedoes and freon tanks. She testified about an explosion that released chemicals into the air and stated that she became sick.

Appellant also submitted a December 21, 1998 report by Dr. Brian K. Miller, a Board-certified family practitioner, who noted that appellant needed continuing care for her asthma.

In a decision dated January 15, 1999, the hearing representative affirmed the March 25, 1998 decision.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation effective March 25, 1998.

Once the Office accepts a claim, it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or that it no longer related to employment.¹ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.²

In the instant case, the Office found that a conflict existed between appellant’s treating physician, Dr. Coalson and the second opinion physician, Dr. Bolin. Drs. Coalson and Bolin disagreed on whether occupational exposure caused the present pulmonary disability in appellant or if it was only a temporary aggravation.

Where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.³ When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴

¹ *Martin T. Schwartz*, 48 ECAB 521, 522 (1997).

² *Id.*

³ 5 U.S.C. § 8123(a); *see also Lawrence C. Parr*, 8 ECAB 445, 453 (1997).

⁴ *James R. Driscoll*, 50 ECAB 146, 154 (1998).

The Office referred the case to Dr. Jacobs for an impartial medical examination. She reviewed appellant's entire file, including a complete review of the medical records and statement of facts. Dr. Jacobs also performed various tests on appellant and diagnosed intrinsic asthma, naturally occurring and not related to occupational exposure. She noted that there were episodic reactions to chemical exposures at work and that intermittent sinusitis contributed to difficulty with asthma control. Dr. Jacobs clearly stated that it was her opinion that appellant's intrinsic asthma is not related to her occupational exposure. As her opinion is that appellant's current condition was not related to her occupational exposure and her well-reasoned opinion is entitled to special weight, the Office met its burden of proof to terminate appellant's benefits.

The decision of the Office of Workers' Compensation Programs dated January 15, 1999 is hereby affirmed.

Dated, Washington, DC
July 12, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member